

mass, the cholesteatoma dipping down around the nerve. The last operation but one, I put Thiersch grafts down around the nerve, but they did not take. I have recently curretted the middle ear, and at present it looks more promising than at any time since I have had him. Now well for three weeks.

One case treated six months following operation, disappeared for one year; returned, re-operated, and cured in six months.

Two cases disappeared before cured, one returned in one year. Treatment for three months effected a cure. The other one never heard from (chronic alcoholic).

One case disappeared when just about dermatized. I think should be all right, do not know (chronic alcoholic).

One case allowed to return to the country and have the doctor carry out treatment. Not well. This I will never allow again.

One case disappeared immediately after the fire, almost well. This particular patient was treated by a physician for more than a year at irregular intervals, and when she returned to me, I removed the same piece of gauze that I had put in the ear about eighteen months prior. Patient recovered absolutely.

In thirty-five cases skin grafts were used. In fifteen cases the Thiersch graft was applied six or eight days following operation. Some of these did not remain, but of late I am having much more success.

In ten cases the Thiersch graft was applied immediately following operation. None of these were entirely satisfactory, probably due to faulty technic.

In ten cases one large skin graft was carried into the ear on a piece of gauze. This is the least satisfactory of the other methods in my hands.

In conclusion, I will predict that the radical mastoid operation for chronic suppuration of the middle ear, will continue to grow in popularity, because it has been demonstrated beyond a doubt, that the cerebral affections that develop following operation are dependent upon pathologic conditions that have existed prior to operation.

That by the use of skin grafts, the hearing will be improved in almost every case that has an intact labyrinth, and the after treatment will be very much reduced.

I further wish to predict that the radical mastoid operation will become so popular ten years from now, that it will be as difficult to find a case of chronic suppurative otitis media, as it is to find the large abdominal tumors of twenty years ago.

¹ Reported in full, California State Journal of Medicine, February, 1908.

² Reported in full, L. B., California State Journal of Medicine, July, 1908.

³ Reported in full, E. H., California State Journal of Medicine, February, 1908.

⁴ Reported in full, Case 1, California State Journal of Medicine, February, 1908.

⁵ Reported in full, Case 2, California State Journal of Medicine, October, 1905.

⁶ California State Journal of Medicine, June, 1905.

HISTORY OF A LAWSUIT FOR ALLEGED MALPRACTICE.

By HENRY J. KREUTZMANN, M. D., San Francisco.

The Council of the Medical Society of the State of California has wisely resolved to create a Medical Defense Department; at the next meeting of the Society this action by the Council has to be sanctioned by the members. Few members, possibly, realize the importance of this matter, and in order to show to what an extent upon the most flimsical pretext a medical man may be subjected to expense of money, to waste of time and energy, to worry (worst of all!), the following "history" is written. The material is divided in two chapters:

I—The medical side of the case and the case before the Superior Court.

II—A decision of the Supreme Court of California.

CHAPTER I.

In March, 1897, Mrs. Hanna Bailey, of this city, presented herself at my office; she reported that she had lost a good deal in weight, was very nervous, was suffering for some time from pain in her abdomen, in the right ovarian region; that her menses were regular but rather free. She had been treated by a Mrs. Dr. Edson with poultices and electricity without getting better. Upon examination I found the woman thin; skin over right ovarian region covered with the typical discoloration produced by prolonged application of poultices; there was found by bimanual examination a mass in the pelvis, taking up mostly the right side. Owing to the great nervousness of the patient and her utter inability to relax, I could make out neither origin nor relation of the condition present and I therefore suggested examination under chloroform. This was accepted and the next morning at her residence on Fell street, chloroform was given by the late Dr. Wm. Friedhofer. When she was fully relaxed I made a careful, thorough examination, bimanually, vaginal and per rectum, and I arrived at the diagnosis: cystic tumor of the right ovary, probably of inflammatory origin. Having finished my examination I asked Dr. Friedhofer to examine her without giving him my diagnosis; he pronounced the case a cystic tumor of the ovary. I saw the patient the next day again; I explained everything to her and everything was talked over: absence of any danger of an operation of this kind; the necessity of removal of the ovary, finding the usual difficulty to explain that the tumor is the ovary and that the removal of the tumor meant loss of the ovary; certainty to keep one ovary and womb with continuation of her sexual faculties.

Patient was satisfied to have operation performed, but stated that she did not have at present the necessary money and would see me when she had the money. In September of the same year she came to my office announcing that she now had the money and accordingly she entered the French Hospital.

The time for operation was set over the phone with the then resident physician, Dr. Putnam. In the afternoon of the day before operation I went to

the hospital and examined Mrs. Bailey again; this examination was made not for the purpose of differential diagnosis, it was done in order to reassure myself of the presence of the tumor, having in mind my opinion of an inflammatory origin. At this examination everything appeared as at the examination under chloroform with the exception of an enlargement of the mass. When next day the abdominal incision was made I found no cystic tumor of the right ovary, but a uniformly enlarged uterus, the size of a three to four month pregnant uterus, of a doughy consistency, looking just like a uterus changed through pregnancy, with large blood vessels on the sides; nowhere any protuberances or nodules in the wall. I could not get rid of the reasonable doubt that this was not a pregnant uterus; the assisting gentlemen were singly asked by me, "Can you positively tell me that this is not a pregnant uterus?" Dr. Putnam, Dr. Allen and Dr. Bell (who was looking on) all answered that they could not positively say that this was not a pregnant uterus. I did not feel justified to remove the uterus for two reasons: first, because I was not sure that this was not a pregnant uterus; and secondly, because I felt bound by the agreement not to remove the uterus, as made to the patient. The ovaries were found enlarged with cystic degeneration of Graafian follicles, some of which were opened and excised. The abdomen was closed. The recovery uninterrupted. I have had no further occasion to examine the woman, but Dr. Carl von Hoffmann gave evidence at the trial that he had examined her about one-half year after operation; her menses were then normal, not free any more; the mass was of the size of an orange; diagnosis, fibromyomatous uterus.

It is not possible to decide with absolute certainty what this somewhat puzzling case has really been, since neither at the time of examination under chloroform nor at the time of operation a pathologic examination of the condition has been made. There are two things possible in my opinion: I and Dr. Friedhofer may have both made an erroneous diagnosis; the mass in the pelvis may have been a fibromyomatous uterus. But there is also a possibility that our diagnosis was correct, that besides there existed a small fibromyoma in the uterus; that pregnancy occurred—pregnancy of very short duration, but its stimulus upon the fibromyoma was sufficient to enlarge it rapidly and considerably, as is regularly seen in pregnancy in the fibromyomatous uterus; the inflammatory cyst of the ovary may have been crowded in the pelvis to rupture. Such cysts of smaller size are of frequent occurrence and often disappear; burst under our examining finger; larger cysts are rarer but I have seen inflammatory cysts of the ovary of considerable size, which ruptured and disappeared. This, my opinion, is somewhat supported by the findings of Dr. C. von Hoffmann one-half year after operation, when the uterus had gone back in size.

May this have been one way or the other: No fair person can say that I did not employ ordinary care and skill! If anything was wrong with me, it

is too great care in handling this case. I have learned from this experience! I have never since tied myself to any absolute diagnosis or any definite operation. I tell the people now that there is a condition present, may be a fibroid of the uterus, may be a cystic ovary, which necessitates an operation in my opinion; it has to be left entirely to my judgment, what I am going to do at the time of operation.

Furthermore, I have met in my own practice and have assisted occasionally a few rare cases of enlargement of the uterus, diagnosed as fibromyoma, where there was thrown a doubt in our minds during operation whether this was not a pregnant uterus. My advice is: cut out in such a case the uterus in toto; pronounce it a fibromyoma; take it home and in the seclusion of your home, cut it open and convince yourself of what it is; this is a safe procedure and avoids trouble!

The result of my interference did not produce any damage to the patient, on the contrary as stated at the time of trial an improvement of the condition was noted. But she fell in the hands of the Philistines, that is, of a lawyer, who probably thought to "pick up some easy money." His name was J. J. Burt. Suit was brought on the ground that there was always a fibroid of the uterus present and no ovarian cyst, at the time of the first examination and at the time of operation; this allegation was based on the testimony of Mrs. Dr. Edson; it was said that a physician employing ordinary care and skill of his profession should have discovered that there was a fibroid of the uterus present and that a physician who did not discover this fibroid of the uterus did not employ ordinary care and skill of his profession; this was the kind, sworn statement of Mrs. Dr. Edson. Damages were claimed for "mental worry and anguish before an operation, and for pain and suffering after operation, the patient being sick and sore in bed for three weeks." This claim was made conjointly by Mrs. Bailey and her husband, balm in the modest sum of \$40,000 was asked from the defendant. In the summer of 1899 this suit was acted upon before Judge John Hunt. It took a whole week; the result was a disagreement of the jury, 8 being in favor of the defendant, 4 kind jurors were inclined "to give the poor woman a few dollars" (statement made to me after the trial by jurors). During this trial some remarkable testimony was introduced by the plaintiff's lawyer; a woman, a Mrs. Harris, was allowed to go on the stand, against the objection of the defense, which objection was overruled by Judge Hunt. This woman had years ago been operated upon for double pyosalpinx; both pus-tubes ruptured during operation. As was the custom at that time silk had been used to tie off the organs and drainage had been resorted to through lower angle of wound. Result,—a fistula which discharged for several months, until the last infected silk ligature had come away, and a ventral hernia. I did only what everybody else was doing at that time and all had similar experiences galore. But she was allowed to tell her tale of woe to the jurors,

that she had "a running sore for months after such an operation and that she was ruptured for life"! This testimony was admitted under a manifestly and apparently erroneous ruling of the court, since at no time of the trial was any claim made by the plaintiff that the operation had not been performed properly, that the wound had not healed and that she experienced any after effects. But her narrative made an impression upon the jurors, as some of them told me afterwards, and due to this manifestly erroneous ruling of the judge, the case was not settled then and there. The second trial, a few weeks later, consumed another week and ended after very short deliberation of the jury, in an unanimous verdict for the defense.

Motion was made by plaintiff for appeal to the Supreme Court, based on the statement that "the evidence did not justify the verdict," besides a number of alleged errors of ruling of the presiding judge were added. After the usual delay, a decision was handed down by the Supreme Court of California January 5, 1904, reversing the judgment of the lower court. This decision of the Supreme Court will serve as text for Chapter II. And here the matter stands!

The lawyer, J. J. Burt, the instigator who sought to make a few dollars on a contingency fee, is dead; Dr. Wm. Friedhofer is dead; Judge John Garber, counsel for defendant, is dead; Mrs. Dr. Edson is dead.

It will not be uninteresting for my confreres to know what such a lawsuit may cost. I had engaged Dr. Gutsch as counsel, who acted very successfully and judiciously in several threatened suits against the German Hospital; upon the urgent advice of medical friends, who were concerned very much about this lawsuit for the medical profession at large, I engaged the late Judge Garber as consulting counsel. I had kept an accurate account of every cent that I had to pay in this matter, but "the fire" has destroyed these records and I have to give a summary from memory as best I can:

Fee for the consulting lawyer.....	\$1250.00
Fee for the acting lawyer.....	1400.00
Fee for subsequent lawyer, Mr. Peixotto, whom I engaged in lieu of Dr. Gutsch..	250.00
Expenses coincident with the taking of the deposition of Mrs. Dr. Edson in Sonora	150.00
Transcript of testimony.....	350.00
Fees to jurors and court stenographer....	204.00
Printing of briefs.....	60.00
Printing of transcript of testimony for Su- preme Court	360.00
Incidentals	40.00
	<hr/>
	\$4064.00

Some remarkable practices became apparent to me during these trials! Both sides have to deposit daily \$24.00 for jurors and \$10.00 for the court stenographer; the winning party's money is retained, he receives a golden brick in the shape of a judgment against the other side; the loser receives his deposit back. This is a direct invitation to unwarranted

suits for damages; the one who does not possess tangible property, will not lose anything by instituting a suit; if he wins he is sure to get his money back, because no lawyer will sue any person or corporation who has no "tangible property." If, on the contrary, the plaintiff loses, well then he gets his deposit back and the other side can just as well throw that judgment in the wastebasket.

Another questionable practice I found in the making of transcript of testimony. Lawyers must have that for the pleading of the case; the one who is sued and who is supposed to have the money has to pay pretty stiff prices for the transcript; then the other side gets "a copy" of the same transcript for a trifle! Hardly fair such a traffic!

It was astonishing what an amount of fabricated and "peculiar" testimony was given by Mrs. Bailey, her husband, and her mother, a Mrs. Thonagel, under the guidance of plaintiff's counsel.

The medical expert testimony is deserving of some consideration, too. The star witness for plaintiff was Mrs. Dr. Edson; graduated from Keokuk after a two years' course, she had drifted over half a dozen different places, where she always remained a short time only, to San Francisco. Here, with her husband, she hung out signs: "Diseases of Women; Nervous Diseases; Eye, Ear, Nose, and Throat; Diseases of the Rectum; Electricity." This faker had never performed any operation; she gave it as her opinion that she did not believe in operations for diseases of women and this quack is earnestly considered an "expert" in gynecology by a Superior Court of San Francisco, California, and by the Supreme Court of California.

It was rather a sad sight to see Dr. Carl von Hoffmann, Professor of Obstetrics and Gynecology of the University of California, join hands with this despicable crowd in an effort to humiliate a colleague and deprive a fellow practitioner of his good name and of some of his money. Judge Garber said of Dr. von Hoffmann, "He was willing to examine this woman in order to go on the witness stand and testify against you; his evidence is the strongest in." If a lawyer comes to a physician and asks him to examine a person for the purpose of furnishing evidence in a suit against a confrere, I think it is the professional duty of any medical gentleman to show the door to the lawyer. Dr. von Hoffmann testified himself that he had seen Mrs. Bailey when "asked" by her lawyer; worse than this, Dr. von Hoffmann gave theoretical evidence, detrimental to the defense. He could not testify as to the facts of the case at the time of examination under chloroform, or at the time of operation for the reason that he had not seen plaintiff then. He was asked by plaintiff's counsel: "Suppose the condition of plaintiff at the time of examination under chloroform and at the time of operation was such as at your examination, was it difficult to find that this was a fibroid of the uterus and not a cyst of the ovary?" Now when Dr. von Hoffmann made his examination he knew from the history of the case that ovarian cyst as well as pregnancy were excluded and yet Dr. von Hoffmann

said it would not have been difficult! In my opinion an ethical physician should have called attention to these conditions and declined to answer. But worst of all, Dr. von Hoffmann must have had interviews with plaintiff's counsel, discussed the theoretical question and shown his willingness to answer in a way that was satisfactory to the prosecution,—otherwise the plaintiff's counsel would never have dreamed of putting Dr. von Hoffmann on the witness stand and asking him theoretical questions.

In marked contrast to the conduct of Dr. von Hoffmann was the kind assistance given defendant by a number of medical men of this city,—Dr. Paolo de Vecchi, Dr. W. S. Thorne, Dr. W. F. McNutt, the late Dr. Levi Lane, Dr. Thomas W. Huntington, Dr. Kenyon, all of whom devoted hours of their valuable time, partly on the witness stand, partly waiting to be called on the stand. It is with the feeling of deep gratitude that I am writing this down. Besides their strong attitude in this case toward the defense, it was a matter of great satisfaction to receive numerous letters from colleagues of different denominations praising my determined stand against such a nefarious attempt of extortion; this unsuccessful attempt spoiled a number of attempted or contemplated suits; besides it had the effect that physicians refused to be victimized by submitting to a compromise;—the worst that any physician can do when threatened with a suit.

TUBERCULOSIS, AND THE MODES OF INFECTION.*

By C. C. WALKER, A. B., M. D., D. V. S., Washington, D. C.

There is no intention on my part, to present any new or original ideas in regard to the modes of infection in tuberculosis. For the most part, I shall review some of the recent work of the Bureau of Animal Industry. It will be impossible, in a paper of this kind, to discuss fully all the points coming within the scope of this subject.

Before going into the subject proper, it may be well to refer to the facilities provided by the Bureau for obtaining information at first hand. In Washington, D. C., we have large and fully equipped modern laboratories. These laboratories are in charge of Dr. Mohler, who work is doubtless familiar to most of you. With him are associated several trained laboratory workers. Just outside the city limits, at Bethesda, Md., is the experiment station, with Dr. Schroeder in charge. As I have worked under Dr. Schroeder I have personal knowledge of the valuable work he is doing as an investigator.

The experiment station consists of about 160 acres of land, a modern laboratory, and various buildings and yards, in which are kept nearly all kinds of domesticated, and some wild animals. Everything is so arranged, that careful study may be made of the many diseases of animals.

In addition to our facilities in Washington, we

work in connection with several of the State Agricultural colleges and universities, and we have several special experiment stations outside of Washington. We also have a large force engaged in meat inspection. Our inspectors make careful reports upon all diseased animals slaughtered under Government supervision. These reports show the nature and extent of the lesions, as well as the character of the disease. In connection with our laboratory and experimental work, the autopsy report is of prime importance. In this way, we are able to secure data, in such quantities that we may form some very definite conclusions regarding the variations in pathological phenomena in many diseases, and especially in tuberculosis. I will say that our records show that as a disease tuberculosis holds first place among dairy cattle, beef cattle and hogs.

It is very important that we should not underrate, nor entirely overlook some of the dangerous sources of infection in tuberculosis. A thorough understanding of all the sources of infection is necessary, in order that boards of health and municipalities may draw up regulations and ordinances, which will be the most useful in protecting the public health, and at the same time not work undue hardship upon the human sufferers of the disease, as well as upon the owners of infected herds.

The generally accepted modes of infection in tuberculosis, are: By inoculation; by ingestion and by inhalation.

With reference to infection by inoculation we need not say very much, except to state that it is a known fact that butchers and others, are often infected locally, when the tuberculous material from beef or pork gains entrance to accidental wounds. This is one of the strong proofs that man is susceptible to bovine tuberculosis. We have direct and positive knowledge of such infection through our meat inspection force. Even some of the inspectors have contracted the disease in this manner.

The next two modes of infection, are ingestion and inhalation. I shall consider these together for obvious reasons. Many of us have had it drilled into us, that we generally contract tuberculosis by breathing in dust laden with tubercle bacilli. Hence, regulations and ordinances may be made with the idea that this is the most common mode of infection. Now let us apply known physical laws, common sense and demonstrated facts in considering this question.

To reach the lungs, the air has to pass through tortuous tubes, viz: nose, pharynx, larynx, trachea and bronchi. There are many twists and turns in the air passages before the air cells are finally reached. If tubercle bacilli, which are heavier than air, are suspended by currents, pass with the air into the respiratory tract they are sure, by known physical laws, to strike the side of the tube at the first turn. As the sides of the tube are moist, the tubercle bacilli are bound to be arrested at the first, and certainly at the second turn. This principle is the same the farmer has utilized from time immemorial in separating the wheat from the chaff by the aid of the wind. The heavier wheat falls nearer a straight line, while the lighter chaff is carried further away.

* Read at the Seventh Semi-Annual Meeting of the Central California Health Officers' Association, Hanford, October, 1909.